

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA,

Plaintiff,

- against -

PRESTON LESCHINS, HSBS MORTGAGE  
CORPORATION (USA) F/K/A MARINE  
MIDLAND MORTGAGE CORP., AND JOHN  
DOES NOS. 1-10,

Defendants.  
----- X

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 6/17/08

STIPULATION AND  
ORDER OF SETTLEMENT

07 Civ. 3384 (JCF)

ECF Case

WHEREAS, the United States of America (the "Government" or the "plaintiff") commenced this action by filing a complaint and issuing a summons on April 27, 2007, and the defendant Preston Leschins (the "Leschins") and HSBC Mortgage Corporation ("HSBC") were each duly served with a copy of the summons and complaint;

WHEREAS, Preston Leschins is indebted to the United States for unpaid federal income taxes for the years 1992, 1993, 1994, 1995, 1997, 1998, 1999, 2000, 2002, 2003, 2004 and 2005, in the total amount, including interest, penalties and statutory additions computed to March 15, 2007, of \$905,750.49, and any interest, penalties, and statutory additions accruing thereafter;

WHEREAS, despite notice and due demand by the Internal Revenue Service, Leschins has not paid the assessed liabilities;

WHEREAS, by reason of the foregoing, and pursuant to 26 U.S.C. §§ 6321-23, a lien in favor of the United States arose as of the dates of the assessments and attached to all property and rights to property of Preston Leschins, including his interest in the shares of the co-operative apartment known as unit 16K and shares of indoor parking space located at 3777 Independence Avenue, Bronx, New York 10463, for which Preston Leschins possessed a proprietary lease (the

“Property”);

WHEREAS, HSBC claims a superior interest to the Government against the Property by virtue of a perfected security interest evidenced by a Loan Security Agreement dated May 9, 1985, UCC-1 Financing Statement filed with the City Register of Bronx County, which provides that 113 shares of stock of 3777 Independence Corp. are pledged by Preston Leschins to HSBC Mortgage Corp. as collateral security. HSBC asserts priority in accordance with Section 9-317 of the Uniform Commercial Code;

WHEREAS, the parties wish to achieve an amicable resolution of the case;

NOW, therefore, it is hereby agreed between the parties and ORDERED as follows:

1. The clerk shall enter judgment against Leschins in the form set forth in Exhibit A for unpaid federal income taxes for the tax years 1992, 1993, 1994, 1995, 1997, 1998, 1999, 2000, 2002, 2003, 2004, and 2005, in the total amount, including interest, penalties and statutory additions computed to March 15, 2007, of \$905,750.49, and any interest, penalties, and statutory additions accruing thereafter.


2. The federal tax liens that arose with the unpaid tax assessments against Leschins and attached to all of his right to property, including the Property, are hereby foreclosed.

3. The Property shall be sold by an officer of this Court, free and clear of any of the rights, titles, claims, or interests of any of the parties to this action, with the net proceeds after the expenses of sale and the claims of any superior secured interest including the claim of HSBC pursuant to its Loan Security Agreement dated May 9, 1985 to be paid to the United States for application to the unpaid income taxes of Leschins for the years 1992, 1993, 1994, 1995, 1997, 1998, 1999, 2000, 2002, 2003, 2004, and 2005.

4. On properly noticed motion by the Government, the Court will appoint a receiver

5. Execution of the judgment in this action shall be stayed as long as Leschins abides by the following terms, conditions, and provisions set forth in paragraphs 6 through 12 of this Stipulation and Order.

6. Leschins shall pay the plaintiff \$50,000.00 within 60 days of the Court so-ordering this Stipulation and Order. Leschins shall pay the plaintiff an additional \$350,000.00 within 180 days of the Court so-ordering this Stipulation and Order. Leschins shall pay the plaintiff an additional \$400,000 within one year of the Court so-ordering this Stipulation and Order.

7. Leschins shall pay the full amount owed for his 2006 taxes on or before June ~~30~~,  2008.

8. Leschins shall file his 2007 tax return and pay the full amount owed for his 2007 taxes on or before October 15, 2008.

9. Leschins will sign a declaration within one week of the date that the Court signs this Stipulation and Order in the form attached hereto as Exhibit B, disclaiming any ownership interest in the apartment located at 2 Columbus Avenue, Unit 7A, New York, N.Y. 10023.

10. The defendant shall make the aforementioned payments by certified check or money order payable to the order of the United States Department of Justice and mailed or delivered to:

United States Attorney's Office  
Southern District of New York  
86 Chambers Street  
New York, New York 10007  
Attn: Financial Litigation Unit

or such other address as the plaintiff may request. A copy of the payment shall also be sent to

United States Attorney's Office  
Southern District of New York  
86 Chambers Street  
New York, New York 10007  
Attn: Lawrence H. Fogelman

11. Leschins shall have the right to pre-pay the entire balance due without penalty and may tender payments in amounts greater than those stipulated in paragraph 6.

12. Leschins agrees that if the Property is sold at any time before all the terms of this Stipulation and Order are fulfilled, the net proceeds of the sale, excluding any proceeds paid to HSBC to satisfy a secured interest that is superior to the Government's lien and usual and customary closing costs, including but not limited to real property transfer taxes, coop flip taxes, and reasonable real estate broker's commission of no more than 3%, that have priority over the Government's liens, will be paid to the United States Attorney's Office and will reduce the \$800,000 plaintiff agreed to pay the Government under the terms of this Consent Judgment.

13. Should Leschins fail to comply with any of the provisions in this Stipulation and Order, or should any check or draft presented by Leschins as payment in compliance with this Stipulation and Order be returned for insufficient funds (collectively, "Default"), the plaintiff shall have the right, at its sole option and discretion, to declare the stay of execution of the judgment in this action no longer in effect, and demand full payment of the judgment amount and foreclose on the Property as set forth in paragraphs 1-3.

14. Before exercising its rights under paragraph 13, the plaintiff shall first afford Leschins notice of such default in writing and shall afford him fifteen (15) calendar days from the date of mailing the notice of default to cure the default. Notice of default shall be mailed to the defendant through his attorney Lee J. Mendelson at Moritt Hock Hamroff & Horowitz LLP,

400 Garden City Plaza, Garden City, N.Y. 11530.

15. If the Government determines that the statements made by Leschins in the declaration attached as Exhibit B are false, the Government, on application to the Court and demonstration that the statements made by Leschins were false, may reinstate the full amount due to the Government as set forth in paragraph 1, plus any interest, penalty and statutory additions that have accrued, less any payments made by Leschins pursuant to this Stipulation and Order. Nothing in this paragraph shall be construed as altering Leschins obligations to comply with the terms of this Stipulation and Order.

16. Plaintiff shall be permitted to file the judgment in this case in any and all counties in which defendant resides or owns any real or personal property, and that such filing shall be a lien on such property.

17. After Leschins has complied with the terms of this Stipulation and Order, including making payments totaling \$800,000 for the taxes owed in year 1992, 1993, 1994, 1995, 1997, 1998, 1999, 2000, 2002, 2003, 2004 and 2005, as well as making timely payments of his tax obligations in accordance with paragraphs 7 and 8, the plaintiff shall file with the clerk of the court and deliver to Leschins a satisfaction of judgment.

18. This Court will retain jurisdiction over this matter until plaintiff has filed with the clerk of the court a satisfaction of judgment.

19. The parties understand and agree that this Stipulation and Order contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral, written or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

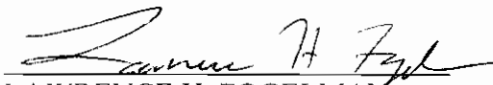
Dated: \_\_\_\_\_, New York  
June \_\_\_\_, 2008

MORRITT HOCK HAMROFF &  
HOROWITZ LLP

By: \_\_\_\_\_  
LEE J. MENDELSON  
Attorney for Defendant  
Preston Leschins  
Tel: 516-873-2000

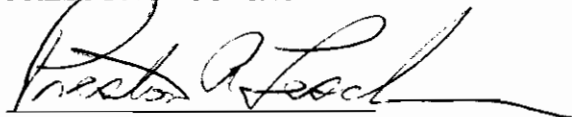
Dated: New York, New York  
June 16, 2008

MICHAEL J. GARCIA  
United States Attorney

By:   
LAWRENCE H. FOGELMAN  
Assistant United States Attorney  
Tel.: (212) 637-2719

Dated: \_\_\_\_\_, New York  
June \_\_\_\_, 2008

PRESTON LESCHINS



Dated: \_\_\_\_\_, New York  
June \_\_\_\_, 2008

STEIN & SHEIDLOWER, L.L.P.

By: \_\_\_\_\_  
ROBERT C. SAMBURSKY  
One Old Country Road, Suite 113  
Carle Place, N.Y. 11514  
Tel: 516-742-1212 x356

SO ORDERED:

  
HONORABLE JAMES C. FRANCIS IV, U.S.M.J

Dated: 6/17/08

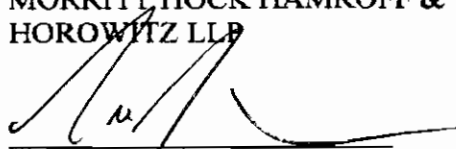
18. This Court will retain jurisdiction over this matter until plaintiff has filed with the clerk of the court a satisfaction of judgment.

19. The parties understand and agree that this Stipulation and Order contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral, written or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

Dated: June 12, New York  
June 12, 2008

MORRITT HOCK HAMROFF &  
HOROWITZ LLP

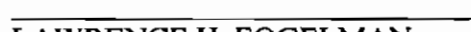
By:

  
LEE J. MENDELSON  
Attorney for Defendant  
Preston Leschins  
Tel: 516-873-2000

Dated: New York, New York  
June \_\_\_\_, 2008

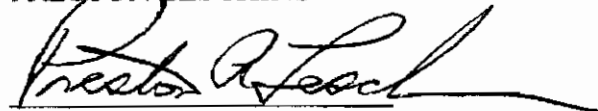
MICHAEL J. GARCIA  
United States Attorney

By:

  
LAWRENCE H. FOGELMAN  
Assistant United States Attorney  
Tel.: (212) 637-2719

Dated: \_\_\_\_, New York  
June \_\_\_\_, 2008


PRESTON LESCHINS



Dated: \_\_\_\_, New York  
June \_\_\_\_, 2008

STEIN & SHEIDLOWER, L.L.P.

By:

  
ROBERT C. SAMBURSKY  
One Old Country Road, Suite 113  
Carle Place, N.Y. 11514  
Tel: 516-742-1212 x356

SO ORDERED:

\_\_\_\_\_  
HONORABLE JAMES C. FRANCIS IV, U.S.M.J

Dated: \_\_\_\_\_

18. This Court will retain jurisdiction over this matter until plaintiff has filed with the clerk of the court a satisfaction of judgment.

19. The parties understand and agree that this Stipulation and Order contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral, written or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

Dated: \_\_\_\_\_, New York  
June \_\_\_\_, 2008

MORRITT HOCK HAMROFF &  
HOROWITZ LLP

By: \_\_\_\_\_  
LEE J. MENDELSON  
Attorney for Defendant  
Preston Leschins  
Tel: 516-873-2000

Dated: New York, New York  
June \_\_\_\_, 2008

MICHAEL J. GARCIA  
United States Attorney

By: \_\_\_\_\_  
LAWRENCE H. FOGELMAN  
Assistant United States Attorney  
Tel.: (212) 637-2719

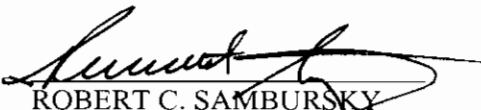
Dated: \_\_\_\_\_, New York  
June \_\_\_\_, 2008

PRESTON LESCHINS

\_\_\_\_\_

Dated: Carle Place, New York  
June 12, 2008

STEIN, Wiener & Roth, LLP

By:   
ROBERT C. SAMBURSKY  
One Old Country Road, Suite 113  
Carle Place, N.Y. 11514  
Tel: 516-742-1212 x356

SO ORDERED:

\_\_\_\_\_  
HONORABLE JAMES C. FRANCIS IV, U.S.M.J

Dated: \_\_\_\_\_



**EXHIBIT A**

-----	x	
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	<u>JUDGMENT</u>
- against -	:	
	:	07 Civ. 3384 (JCF)
PRESTON LESCHINS, HSBS MORTGAGE	:	
CORPORATION (USA) F/K/A MARINE	:	<u>ECF Case</u>
MIDLAND MORTGAGE CORP., AND JOHN	:	
DOES NOS. 1-10,	:	
	:	
Defendants.	:	
-----	x	

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the United States of America is awarded judgment against defendant Preston A. Leschins for unpaid federal income taxes for the tax years 1992, 1993, 1994, 1995, 1997, 1998, 1999, 2000, 2002, 2003, 2004, and 2005, in the total amount, including interest, penalties and statutory additions computed to March 15, 2007, of \$905,750.49, and any interest, penalties, and statutory additions accruing thereafter up to the date that full payment is made, and that the United States of America have execution therefor.

The federal tax liens that arose with the unpaid tax assessments against Leschins and attached to all of his right to property, including the Property, are hereby foreclosed. Upon application of the United States, the Property shall be sold by an officer of this Court, free and clear of any of the rights, titles, claims, or interests of any of the parties to this action, with the net proceeds after the expenses of sale and the claims of any superior secured interest to be paid to the United States for application to the unpaid income taxes of Leschins for the years 1992, 1993, 1994, 1995, 1997, 1998, 1999, 2000, 2002, 2003, 2004, and 2005.

**Dated:** New York, New York  
June \_\_\_\_, 2008

\_\_\_\_\_  
**Clerk of Court**

**So Ordered:**

**By:**

\_\_\_\_\_  
Hon. James C. Francis IV  
United States Magistrate Judge

\_\_\_\_\_  
**Deputy Clerk**

**EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
- against -	:	
	:	07 Civ. 3384 (JCF)
PRESTON LESCHINS, HSBS MORTGAGE	:	
CORPORATION (USA) F/K/A MARINE	:	
MIDLAND MORTGAGE CORP., AND JOHN	:	<u>ECF Case</u>
DOES NOS. 1-10,	:	
	:	
Defendants.	:	
-----	-X	

**DECLARATION OF PRESTON LESCHINS**

PRESTON LESCHINS, pursuant to 28 U.S.C. § 1746, declares the following under penalty of perjury:

1. I presently reside at 2 Columbus Avenue, Unit 7A, New York, N.Y. 10023 (the "Apartment").
2. I did not contribute any funds towards the purchase of the Apartment.
3. Any payments I have made towards the mortgage on the Apartment owned by my wife at 2 Columbus Avenue have been de minimus.
4. Substantially all of the payments for the mortgage on the Apartment have been made by wife with money that she has earned or with money that has been provided by her family, and not with money provided by me.

5. I have no equity in the Apartment, and disclaim any right to equity in the Apartment.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 28, 2008  
New York, N.Y.

  
PRESTON LESCHINS